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ABSTRACT

This pamphlet outlines requirements for a free, appropriate, public education (FAPE) for students with disabilities under Section 540 of the Rehabilitation Act of 1973. Requirements include: (1) ensuring that all school age children who have disabilities are entitled to FAPE; (2) providing an appropriate education that includes educational services designed to meet the individual educational needs of students with disabilities as adequately as the needs of typical students; (3) ensuring the education of each student with a disability with typical students to the maximum extent appropriate to the needs of the student with a disability; (4) employing nondiscriminatory evaluation and placement procedures and establishing due process procedures that enable parents and guardians to receive required notices, review their child's records and challenge identification, evaluation, and placement decisions; and (5) providing a free education without cost to the person with a disability, except for fees equally imposed on typical students. The pamphlet also discusses the differences and similarities of FAPE provisions under the Individuals with Disabilities Education Act. (CR)

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FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES

REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

JULY 1999

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REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

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FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

U.S. Department of Education
Office for Civil Rights

July 1999

FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 protects the rights of individuals with disabilities in programs and activities that receive federal funds. Section 504 provides that: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."[1]

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive funds from ED. Recipients of these funds include public school districts, institutions of higher education, and other state and local education agencies. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104), and maintains an Office for Civil Rights (OCR), with 12 enforcement offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of funds.[2]

FREE APPROPRIATE PUBLIC EDUCATION

The Section 504 regulation requires a school district to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.

This pamphlet answers the following questions about FAPE:

- Who is entitled to a free appropriate public education?
- How is an appropriate education defined?
- How is a free education defined?

WHO IS ENTITLED TO FAPE?

All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education. The ED Section 504 regulation defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.[3]

For elementary and secondary education programs, a qualified person with a disability is a person with a disability who is:

1. of an age during which it is mandatory under state law to provide such services to persons with disabilities;

2. of an age during which persons without disabilities are provided such services; or

3. a person for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). (IDEA is discussed later in the pamphlet.)

In general, all school age children who have disabilities are entitled to FAPE.

HOW IS AN APPROPRIATE EDUCATION DEFINED?

An appropriate education may be defined in different ways. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services in separate classrooms for all or portions of the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by such related services as speech therapy, occupational and physical therapy, and psychological counseling and medical diagnostic services necessary to the child's education.

An appropriate education will include:

1. educational services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met;

2. the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;

3. nondiscriminatory evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and

4. establishment of due process procedures that enable parents and guardians to receive required notices, review their child's records and challenge identification, evaluation and placement decisions and that provide for an impartial hearing with opportunity for participation by parents and representation by counsel, and a review procedure.

Educational Services Must Meet Individual Needs

To be appropriate, educational programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of

nondisabled students are met. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of individuals with disabilities.

One way for ensuring that programs meet individual needs is the development of an individualized education program (IEP) for each student with a disability. IEPs are required for students participating in special education programs of recipients of funding under the IDEA.

The quality of educational services provided to students with disabilities must equal that provided to nondisabled students. For example, teachers of students with disabilities must meet standards for certification as high as those teachers of nondisabled students meet. Facilities must be comparable and appropriate materials and equipment must be available.

Students with disabilities may not be excluded from participating in nonacademic services and extracurricular activities on the basis of disability. Persons with disabilities must be provided an opportunity to participate in nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that

provide assistance to persons with disabilities and employment of students.

Students With Disabilities Must be Educated With Nondisabled Students

Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the educational needs of the students with disabilities. A recipient must place a person with a disability in the regular educational environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

As necessary, specific supplementary aids must be provided for students with disabilities to ensure an appropriate educational setting. Supplementary aids may include interpreters for students who are deaf, readers for students who are blind, and equipment to make physical accommodations for students with mobility impairments.

A recipient that places an individual with disabilities in another school is responsible for ensuring that the student receives a free appropriate public education as close to his/her home as possible.

If a recipient operates a facility for persons with disabilities, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

Evaluation and Placement Must be Nondiscriminatory

Failure to provide persons with disabilities with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is unacceptable to base individual placement decisions on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

An individual evaluation must be conducted before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement. Recipients must establish standards and procedures for initial and continuing evaluations and placement decisions

regarding persons who, because of disability, need or are believed to need special education or related services. These procedures must ensure that tests and other evaluation materials:

- have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;

- include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient; and

- are selected and administered so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Recipients must draw upon a variety of sources in the evaluation and placement process so that the possibility of error is minimized. All significant factors related to the learning process must be considered.

These sources and factors include, for example, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed with nondisabled students to the greatest extent appropriate.

Periodic reevaluation is required. This may be conducted in accordance with the IDEA regulation, which requires reevaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation.

Recipients Must Have Due Process Procedures for the Review of Identification, Evaluation and Placement Decisions

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

Parents must be told about these procedures. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for participation and representation by counsel. A review procedure must be available to parents or guardians who disagree with the hearing decision.

HOW IS A FREE EDUCATION DEFINED?

Recipients operating federally funded programs must provide necessary services free of charge to students with disabilities and their parents or guardians. Provision of a free education is the provision of educational and related services without cost to the person with a disability or his/her parents or guardians, except for fees equally imposed on nondisabled persons or their parents or guardians.

If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a disability in, or refer such person to, a program other than the one it operates.

However, the recipient remains responsible for ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement.

The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers,[4] may be used by the recipient to meet the requirements of FAPE.

If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. If a recipient school district places a student with a disability in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care.

To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must

ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if a person with a disability were placed in the recipient's program.

FAPE PROVISIONS IN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Part B of IDEA requires participating states to ensure that a free appropriate public education (FAPE) is made available to eligible children with disabilities in mandatory age ranges residing in the state. To be eligible, a child must be evaluated as having one or more of the disabilities listed in IDEA and determined to be in need of special education and related services. Evaluations must be conducted according to prescribed procedures. The disabilities specified in IDEA include: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, and multiple disabilities. Additionally, states and local education agencies (LEAs) may adopt the term "developmental delay" for children aged 3 through 9 (or a subset of that age range) who are experiencing a developmental delay as defined by the state and need special education and related services.

States and LEAs that opt to use the term "developmental delay" still may use the disability categories in Part B of IDEA for children with diagnosed disabilities.

The requirements for FAPE under IDEA are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of IDEA is one means of meeting the requirements of the Section 504 regulation.

IDEA requirements apply to states receiving financial assistance under IDEA. States must ensure that their political subdivisions that are responsible for providing or paying for education for children with disabilities meet IDEA requirements. All states receive IDEA funds. Section 504 applies to any program or activity receiving ED financial assistance.

IDEA is administered by ED's Office of Special Education Programs (OSEP), a component of ED's Office of Special Education and Rehabilitative Services (OSERS). For more information about IDEA, contact OSERS at 400 Maryland Avenue, S.W., Washington, D.C. 20202. Additional information is also available at: www:ed.gov/offices/OSERS/OSEP/index.html.

HOW TO OBTAIN FUTHER ASSISTANCE/INFORMATION

If you would like more information about FAPE and the other laws enforced by the Office for Civil Rights, how to file a complaint, or how to obtain technical assistance, you may want to contact the enforcement office that serves your state or territory. For further information, please contact our Customer Service Team at the toll free number: 1-800-421-3481. You may also visit our web site at http://www.ed.gov/offices/OCR.

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[1] Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

[2] Title II of the Americans with Disabilities Act of 1990, (ADA), 42 U.S.C. § 12131 et seq., prohibits state and local governments from discriminating on the basis of disability. ED enforces Title II in public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. The requirements regarding the provisions of a free appropriate public education (FAPE), specifically described in the Section 504 regulations, are incorporated in the general non-discrimination provisions of the Title II regulation. Because Title II does not change the requirements of FAPE, this pamphlet will refer only to Section 504.

[3] The Section 504 regulation uses the term "handicap." However, Congress has amended the Rehabilitation Act of 1973 and has replaced the term "handicap" with the term "disability." The terms "handicap" and "disability" have the same meaning. This pamphlet will only use the term disability.

[4] A recipient responsible for providing FAPE may not require parents to use private insurance proceeds to pay for required services where the parents would incur financial loss.